



Comptroller General  
of the United States

Washington, D.C. 20548

145660

## Decision

**Matter of:** Oak Ridge Associated Universities

**File:** B-245694

**Date:** January 16, 1992

Jon M. Veigel for the protester.

David C. Rickard, Esq., Defense Nuclear Agency, for the agency.

Mary G. Curcio, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Where protester's proposal failed to address specific requirements of the request for proposals, agency's evaluation of the proposal as technically unacceptable was reasonable.

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### DECISION

Oak Ridge Associated Universities protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. DNA001-91-R-0035, issued by the Defense Nuclear Agency (DNA) for research concerning the mortality of military personnel who were present at atmospheric tests of nuclear weapons. Oak Ridge asserts that the agency unreasonably evaluated its proposal.

We deny the protest.

During 1978-1984, DNA contracted with the National Academy of Sciences (NAS) to perform an epidemiological study of veterans who participated in selected atmospheric nuclear tests. Subsequently, it was determined that the study was defective because the study participants were not compared to a matched control group and because the participant list that DNA provided to NAS contained significant errors. As a result, DNA determined that the study had to be repeated. Initially, DNA technical personnel requested approval to award the new contract to NAS on a sole-source basis due to

NAS' prior experience and international reputation.<sup>1</sup> DNA's Contract Review Board, however, refused to approve the sole-source award because it was not convinced that NAS was the only prestigious organization capable of performing the follow up study. Consequently, the agency issued the instant RFP on March 21, 1991.

The RFP was issued using FAST TRACK procedures.<sup>2</sup> The RFP required offerors to submit a technical/management proposal and a price proposal. The technical/management proposals were to be evaluated on the basis of two equal factors, each of which listed subfactors in descending order of importance. The first factor required the offeror to be an internationally recognized organization with experience in the following areas: (1) military organizational records and military reporting systems during the period 1951-1957; (2) use of the Department of Veterans Affairs (VA) Beneficiary Identification and Records Locator Subsystem (BIRLS) and the VA Master Index (VAMI); (3) epidemiologic research involving mortality analysis; and (4) comparison of mortality data of test participants to an appropriate control group. The second factor was soundness of approach which would be evaluated to determine whether the offeror proposed: (1) a method to obtain a control group to be selected from men on active duty at the time, who did not participate in the five specified test series, but can be matched on branch of service, rank, and service in similar units; (2) a means to ascertain mortality through the BIRLS and the VAMI; (3) a sound method to resolve discrepancies between the 1985 NAS report and the current DNA data base; and (4) a means to compare mortality of test participants to the control group to determine if a statistically significant excess of mortality from malignant neoplasms, other diseases, or trauma exists.

The RFP provided that any contract award resulting from the solicitation would be made primarily on the basis of technical/management superiority with cost carefully considered. The RFP also provided that in preparing proposals it was

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<sup>1</sup>NAS was chartered by Congress in 1863 to conduct studies in the fields of science or art when requested to do so by the government. NAS is a nonprofit organization which has a policy that it will not compete for government contracts and will only negotiate for contracts on a sole-source basis where it believes its services are appropriate. See Moshman Assocs., B-216107, Nov. 5, 1984, 84-2 CPD ¶ 498.

<sup>2</sup>DNA explains that the use of FAST TRACK procedures requires the agency to act expeditiously in evaluating the proposals and processing any contract award.

important for offerors to provide adequate and specific information. Specifically, the RFP stated:

"Hasty responses or responses which merely repeat the [statement of work (SOW)] cannot be considered as being responsive to the requirements of the RFP. Assurances of experience, capability or qualification, without a clear demonstration to support the claim, will adversely influence the evaluation of the proposal."

Finally, the solicitation provided:

"The [g]overnment reserves the right to cancel this RFP in the event that no OUTSTANDING technical proposals are received. In the event that this RFP is canceled, DNA will negotiate with the National Academy of Sciences on a sole source basis in order to procure the research required under the [SOW]."<sup>3</sup>

Oak Ridge was the only offeror to respond to the solicitation. DNA reviewed the proposal against the criteria in the solicitation and found that the proposal, which received a score of 34.7 out of 100 points, was technically unacceptable. Specifically the agency found that the proposal submitted by Oak Ridge: (1) did not demonstrate that the protester had extensive experience with military organization records and military reporting systems during the 1951-1957 time period, (2) did not demonstrate that the protester had experience with the BIRLS or the VAMI, (3) showed the offeror had limited experience to determine if there was a statistically significant excess of mortality, (4) did not make a specific recommendation for the selection of a control group, (5) did not propose how to resolve discrepancies between the 1985 NAS mortality study and the current

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<sup>3</sup>Oak Ridge objects to the inclusion of this cancellation clause in the solicitation as evidencing an intent by the agency to award the contract to NAS on a sole-source basis. Under our Bid Protest Regulations, a protest concerning an apparent impropriety in a solicitation must be filed prior to the closing time for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Here, proposals were due on April 23, 1991, but Oak Ridge did not file its protest with our Office until September 19. Thus, its protest against the inclusion of the cancellation clause is untimely and will not be considered on the merits. In any case, since, as discussed below, DNA reasonably concluded that the proposal submitted by Oak Ridge was technically unacceptable, this provision had no impact on the rejection of the protester's proposal.

DNA data base, (6) proposed the appointment of an advisory group which DNA believed would compromise the independent nature of the study, (7) did not clearly demonstrate that the offeror had sufficient computing knowledge and resources, and (8) did not sufficiently address the contribution of potential internal exposure to relevant dose or specific disease endpoints.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the evaluation was reasonable and consistent with the evaluation criteria, Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338. Here, we have considered Oak Ridge's proposal, the evaluation materials, Oak Ridge's protest and the DNA response to each of Oak Ridge's arguments. As a result of our review, we find no basis for concluding that the evaluation of the protester's proposal was unreasonable or not in accordance with the stated criteria. To illustrate our conclusion, we will discuss in detail examples of the deficiencies DNA found in the proposal.

The RFP specifically stated that offerors would be evaluated for experience with the use of BIRLS and VAMI. In reviewing Oak Ridge's proposal, DNA found that Oak Ridge did not have experience with these systems. Oak Ridge does not dispute that it has no experience with these systems. Instead, Oak Ridge argues that it has experience utilizing many other national systems. Oak Ridge asserts that its experience with these other systems is sufficient to demonstrate that the firm has a highly developed ability to access and use complex record systems. In this regard, Oak Ridge asserts that it does not take a great deal of experience to become familiar with and use a new record system.

The fact remains, however, that the RFP required specific experience which Oak Ridge does not possess or at least has not demonstrated it possesses. Under these circumstances, we cannot conclude that the agency's evaluation of the protester's proposal for this factor was unreasonable.

The RFP provided that the offeror would be evaluated to determine if the offeror proposed a means to obtain a control group, to be selected from men on active duty at the time the targeted tests took place, who did not participate in the five specified test series, but can be matched on branch of service, rank, and service in similar unit. In evaluating Oak Ridge's proposal for this factor, DNA found that the proposal was deficient because the offeror proposed two possible means of selecting the control group, but did not give a specific recommendation. In addition, DNA found that neither of the proposals offered by Oak Ridge was sufficient to overcome the past problems that NAS had in

performing the study. For example, the evaluators found that Oak Ridge did not provide alternative approaches for selecting a control person when there was no counterpart by sex, age, and rating to a test participant.

In response, Oak Ridge asserts that it proposed a meeting with DNA to discuss the problems and to select the method for selecting the control group. Oak Ridge also complains that DNA is criticizing its approach while it is admitting that it had past problems itself in determining how to choose a control group.

In our view, the fact that DNA had problems in the past in defining how to choose a control group did not make it unreasonable for the agency to downgrade Oak Ridge's offer for failing to propose a specific method to determine the control group. The agency was attempting to find a contractor who could perform the study and overcome past problems which DNA experienced. Choosing a control group is an integral part of performing that study and one which DNA reasonably considered in determining if Oak Ridge was able to perform the study. Further, the fact that Oak Ridge proposed two suggestions for selecting a control group and offered to have a meeting to choose the best method and work out the problems does not change our view because the RFP specifically placed on the offeror the responsibility of choosing a method to select the control group rather than make the responsibility a joint DNA/offeror effort.


Oak Ridge was also downgraded because its proposal did not indicate a method for resolving discrepancies between the 1985 study and the current DNA data base of atmospheric test participants and did not discuss the significance, if any, that such discrepancies might have in assessing the potential for test related illness among participants. DNA was concerned that without a concept for addressing the shortcomings of the extant data, as well as the additional years of life experience of those being studied, it would be impossible to draw meaningful conclusions.

Oak Ridge responds that the RFP did not require offerors to resolve the discrepancies and did not indicate the nature of the discrepancies. Oak Ridge also asserts that the RFP did not question the roster for the 1985 study nor indicate that persons were included in the study who did not belong in it.

Contrary to Oak Ridge's assertion, the RFP specifically required offerors to propose a sound method to resolve discrepancies between the 1985 NAS report and the current DNA data base. Further, the SOW listed both the 1985 Mortality of Nuclear Weapons Test Participants data base and the DNA participant data base as applicable documents.

Under these circumstances, Oak Ridge again ignored a specific solicitation requirement, and we find that DNA acted reasonably in finding the proposal submitted by Oak Ridge deficient.<sup>4</sup>

The protest is dismissed in part and denied in part.

  
for James F. Hinchman  
General Counsel

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<sup>4</sup>Oak Ridge also asserts that the agency should have held discussions with the firm and pointed out the deficiencies in its proposal. An agency, however, is not required to hold discussions with an offeror that submits a technically unacceptable proposal. See Senior Coms. Servs., B-233173, Jan. 13, 1989, 89-1 CPD ¶ 37.